

United States Marine Corps
Command and Staff College
Marine Corps University
2076 South Street
Marine Corps Combat Development Command
Quantico, Virginia 22134-5068

MASTER OF MILITARY STUDIES

THE EFFECTIVE USE OF U. S. COAST GUARD SECURITY ZONES IN
COUNTERING UNLAWFUL TRANSNATIONAL PROTESTS AT SEA

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LIEUTENANT COMMANDER GREGORY H. MAGEE JR.
U.S. COAST GUARD

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Mentor and Oral Defense Committee Member: ERIC Y. SHIBUYA
Approved: [Signature]
Date: JAN 21, 2009

Oral Defense Committee Member: PAUL GELPI
Approved: [Signature]
Date: 21 JAN 2009

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Executive Summary

Title: THE EFFECTIVE USE OF U. S. COAST GUARD SECURITY ZONES IN COUNTERING UNLAWFUL TRANSNATIONAL PROTESTS AT SEA

Author: Lieutenant Commander Gregory Magee, United States Coast Guard

Thesis: U.S. Coast Guard (USCG) enforced Security Zones, as highlighted in response to Cuban American protest flotillas, have proven an effective and focused means of preventing international incidents caused by non-state actors traveling from the United States to other nations that are a target of their protests.

Discussion: A flotilla in basic terms is an organization of boats underway at the same time for a similar purpose. Non-state actors have used flotillas as a form of protest at sea, often targeting other nations or their activities. Environmental groups like Greenpeace have used flotillas to disrupt activities of other nations. The Cuban American community has used flotillas as a form of direct protest against Cuba. These acts can be detrimental to U.S. relations with the target nation if that nonstate actor is operating from U.S. ports. In the case of Cuba, this action emboldened Cuba to escalate its reaction. This ended up taking the form of the shoot down of U.S. private aircraft in 1996 by the Cubans. While unlawful flotilla protest actions are detrimental to U.S. bilateral relations and often are clear violations of the law, there is little the U.S. can do that will prevent the incident from occurring in the first place. The protestors may be arrested after the fact, but the incident and potential damage to bilateral relations has already occurred. USCG Security Zones offer a chance to prevent a flotilla from departing the Security Zone if they intend to commit unlawful acts. An essential element to triggering the level of authority necessary to control the movement of vessels in ports to other nations is a Presidential Declaration of Emergency. These can be controversial since there is no law that sets the standard for what is a true emergency. In the case of Cuban American protestors, the Security Zone to govern flotilla actions against Cuba was largely successful. It curbed unlawful action, namely violating Cuban territorial seas. On the occasions it was enforced, it deterred other protestors and prevented further incidents between Cuba and the U.S. At the same time it prevented damage to major agreements in place to prevent mass migrations. The Security Zone structure was modified several times to cope with evolving threats, utilizing extensive interagency cooperation to deal with the complex aspects of these protests and Cuba's response. A measure of controversy that the USCG Security Zone has faced is through the regular renewal of the Presidential Declaration of Emergency. Originally enacted in 1996 following Cuba's shoot down of U.S. aircraft, it has been continuously renewed through 2008, when many contend the state of emergency had passed.

Conclusion: USCG Security Zones offer a means of legally preventing flotillas operating from U.S. ports from committing unlawful acts. They have been employed effectively. This legal construct serves a framework for countering the actions of other protests in the future. Actions such as those that occurred with Japanese whaling vessels in the Pacific by flotillas, and flotillas attempting to run the Israeli blockade of Gaza, are two types of scenarios that could be similarly played out with flotillas operating from U.S. ports against nearby North American and Caribbean neighbors.

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Preface

From 1998 to 2001 while at Coast Guard Headquarters, I had the opportunity to witness the development of U.S. policy regarding Cuban American flotillas and in 2001 monitored a flotilla as Commanding Officer of USCGC SAPELO (WPB 1314). This research was an opportunity to fully examine U.S. policy and highlight another way the Coast Guard proves itself as a unique instrument of national security.

I am greatly indebted to my wife Christy and my father Greg for their numerous reviews of my thesis work, their ideas, and their honest feedback. I also extend my thanks to the faculty of the Marine Corps Command and Staff College, who have provided outstanding support and learning opportunities while at the school.

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Introduction

Non-state actors exercise increasing influence within the United States. These private individuals and interest groups often make nations the targets of protests, to achieve various goals or to simply antagonize them.¹ These protests can place the United States in an awkward position with the other nation, potentially damaging bilateral relations. A potent form of protest is the use of private boats operating together in a flotilla. Flotillas can violate territorial seas and directly confront law enforcement or naval vessels. The other nations, particularly those with stressed relations with the U.S., may take action through a military response against the protestors. Worse, these nations can extend their reach beyond the scope of their borders and that of the flotillas, attacking vessels or aircraft operating on the high seas. This scenario played out in 1995 and 1996 when Cuban American flotillas provoked Cuba into shooting down U.S. private aircraft in international airspace. These flotillas negatively influenced U.S. policy toward Cuba and complicated the already strained relationship. The U.S. is normally reactive in these situations, only taking law enforcement action after the incident occurs. This does little to deter these incidents from happening. However, there is a way to proactively counter unlawful flotilla protests actions through the use of U.S. Coast Guard (USCG) authorities. USCG enforced Security Zones, as highlighted in response to Cuban American protest flotillas, have proven an effective and focused means of preventing international incidents caused by non-state actors travel from the United States to the other nations that are a target of their protests.

This paper will examine the use of flotillas of private vessels to protest other nations and how unlawful acts can provoke target nations into hostile action. It will highlight how flotillas can influence bilateral relations and various law enforcement options available to the U.S. to counter unlawful protest actions. The most effective means are through USCG Security Zones.

These Security Zones and the key requirement of a Presidential Declaration of Emergency are explained. It will also cover the history of Cuban Migration to the U.S. and how it drives the agenda of the Cuban American community. Cuban American non-state actors effectively used flotillas to provoke Cuba into action that strained bilateral relations with the U.S. Finally, it will highlight how USCG Security Zones have been successful in preventing unlawful actions during Cuban American flotillas and how Security Zones may be employed in the future.

Flotillas as a Form of International Protest

All non-state actors operate out of a nation and are accountable to that nation's laws. Those laws and their enforcement act as a check on the reach of the non-state actor and prevent international incidents through unlawful actions. Unlawful actions by flotilla protestors can include violating territorial seas of another nation, blocking waterways, impeding the safe navigation of a vessel, damaging property, polluting and disobeying law enforcement orders. In the U.S., laws often deal with the import and export of materials or financial actions to counter illegal activities. But these non-state actors can depart the U.S. and travel directly to the target nation by sea and air to conduct their protests. Aircraft have very limited options with their ability to protest. Broadcasting and discharging items intentionally (like pamphlets) are unlawful but have minimal impact. Logistics (range and requirement for a base of operations), limited endurance, the risk of having expensive aircraft seized or damaged, and/or pilot's licenses revoked do not make them the best tools for direct protest action. However, private boats are easier to obtain than aircraft, require little training and have no operator licensing requirements in the U.S. Large commercial ships are expensive, but have unlimited range and are the tools of the most exclusive non-state actors like Greenpeace or the Sea Shepherd Conservation Society. Private boats are the most accessible tools for protests, organized into groups called flotillas.

Flotillas are groups of vessels underway together for a common purpose. With flotillas predominantly made up of pleasure craft, their range is limited. This leaves countries near the U.S. as likely targets for flotilla protests, namely Canada, Mexico, Cuba, the Bahamas and other Caribbean islands. Russia can be reached by remote Alaskan locations, but the opportunity for safe navigation is limited.

The values and freedoms of targeted nations as well as the strength of their bilateral relations with the U.S. are a factor in the targeted nation's response to protests at sea. In addition to the similar values and freedoms that Canada shares with the U.S., strong bilateral relations make it unlikely Canada will blame the U.S. for the unlawful action of U.S. flotilla protestors in Canadian waters. The Bahamas and Mexico have similar values and freedoms, but from time to time bilateral relations with the U.S. become strained over economic or immigration issues, making current relations at the moment a factor in the reaction to the protests. In contrast, Cuba does not have similar values or freedoms and has strained bilateral relations with the U.S. When faced with flotilla protests, Cuba may take a confrontational view on the situation, either through a perceived threat to security or as an opportunity to embarrass the U.S. or the Cuban-American exile community. The U.S. failure to act against unlawful flotilla protests can tacitly support the goals of the protest. If the action taken by the U.S. is only reactive, international relations are still damaged by the protest act. Additionally, the U.S. may have to conduct further bilateral relations based on the situation involving flotillas or the target nation's reaction, rather than operating on its own terms. Environmental protestors have a history of using flotilla protests, often with unlawful acts to improve their impact.

Greenpeace and Environmental Protesters' Use of Flotillas

Greenpeace and its predecessor movement presented the United States with situations involving formally organized flotillas for protest purposes. In 1971, the group that would become Greenpeace made plans to charter three vessels to protest underground nuclear testing on Amchitka Island, Alaska.² The Canadian fishing vessel PHYLLIS CORMACK was the only vessel to get underway for the protest. Before other vessels could get underway, the tests were delayed and PHYLLIS CORMACK anchored off Akutan Island (part of the state of Alaska) to await further developments. Although a USCG security zone was in place around Amchitka Island and an at-sea conflict was planned for, Canadian passengers on PHYLLIS CORMACK went ashore on Akutan without permission. Because of this, the vessel was conveniently seized for U.S. Customs violations and the protest thwarted. In 1981, a Greenpeace flotilla made up of Canadian flagged vessels departed Canada and entered the U.S. waters of the Straits of Juan de Fuca to protest testing of the ability of supertankers to navigate the waterway. The flotilla effectively blocked the passage of the supertanker, helping to prevent future efforts to build ports for them.³ The USCG seized several of the flotilla vessels and arrested their crews. In 1998, other environmental protestors using Canadian vessels entered U.S. waters to protest the whale hunt undertaken by the Makah Indian tribe, a hunt that was licensed by the U.S. Government.⁴ In 2006, protestors organized a flotilla to protest a nuclear materials shipment from Charleston, South Carolina, to France. Security around the ship ensured the protestors could not get close enough to influence the delivery timelines. In each of these cases there was a potential for an international incident, however, the U.S. did not blame Canada for the flotilla nor did France blame the U.S. for the actions of its citizens or vessels.

Enforcement Options Against Unlawful Acts of a Flotilla

There are various enforcement options available to the U.S. in dealing with unlawful flotilla protests. However, flotillas can conduct protests without unlawful acts and simply be an assembly lawfully protesting, so enforcement options target only unlawful activities, not flotillas in general. An option that can be a minor deterrent can be the immigration status of the protestors if they are not U.S. citizens. If the protestors were citizens of the target nation, the U.S. would not be able to advocate for them or negotiate release if arrested. This is often the case with Cuban American exiles that are U.S. nationals, but remain citizens of Cuba. A preventive enforcement measure is a restraining order issued against the participants. The weakness of a restraining order is that the recipient could easily make a case before a judge that they do not intend to violate the law or conduct anything other than a peaceful protest. The process in itself can attract attention to the protester's cause that is undesirable for the U.S. government. A maritime enforcement option available is enforcement of licensing and certificate of inspection if U.S. commercial vessels are used in flotillas. Serious violations may allow for the termination of the voyage, sending the vessel back to port or preventing it from getting underway. If there are trade restrictions in place against the other nation, laws and regulations may be enforced regarding travel and transport of materials to that nation. These are difficult to enforce if there is no direct relationship between the flotilla and either unlicensed commerce or the transfer of money to the target nation. Changing U.S. law to target the specific unlawful actions of the flotillas is useful, but Congress could propose sweeping changes or prohibitions that are detrimental to the Administration's foreign policy or freedoms enjoyed by lawful boaters. Another enforcement option that is preventative in nature is a charge of conspiracy to violate a U.S. law. A conviction for conspiracy is extremely difficult to obtain, as

it requires extensive evidence demonstrating intent. Other than preventive measures listed, options that remain are exercised after the unlawful act is committed. They include arrests, seizure of property or assessing civil penalties. A successful enforcement option that is preventive in nature is the use of USCG Security Zones.

USCG Maritime Security Zones

Security Zones are a useful tool at the disposal of the USCG. They have been in existence for many years and are used to guard specific locations and high value assets. They are established by the USCG and are:

...an area of land, water, or land and water which is so designated by the Captain of the Port or District Commander for such time as is necessary to prevent damage or injury to any vessel or waterfront facility, to safeguard ports, harbors, territories, or waters of the United States or to secure the observance of the rights and obligations of the United States.⁵

A key element of the security zones is that they are confined to U.S. territorial seas or specific locations within them and are announced in the Federal Register and through the formal Notice to Mariners process. USCG Security zones can exist in fixed geographic locations, such as military bases, nuclear power plants, or around other critical facilities. A three-mile security zone was in place around Amchitka Island during the nuclear testing in the 1960's and 1970's.⁶ USCG Security zones can also be mobile, such as surrounding individual vessels like cruise ships or Navy vessels. Their employment can be simple or complex, as was the case in Hawaii in 2007 during protests against high-speed ferries, where both a mobile and static security zone was needed. The USCG established a 100-yard mobile security zone around the high-speed ferry itself. When one arrived at Kauai's Nawiliwili Harbor, a flotilla of rafts and surfboards set out to obstruct the transit of the vessel at a narrow point in the channel. Seeing the narrow point in the channel obstructed, the ferry captain chose not to enter the port.⁷ Since the protestors and

the vessel did not come within 100 yards, they could not be charged since there was no violation of the Security Zone. The Security Zone was later amended to include the fixed locations of the harbor as well as the ferry itself, so protestors blocking the harbor could be arrested. Security zones contemplated and used to counter Cuban American flotillas to Cuba are significantly larger and invoking the power of security zones to control the movement of vessels in and out of port bound for other nations requires a Presidential Declaration of Emergency.

Presidential Declarations of Emergency

A Presidential Declaration of Emergency is an important trigger for USCG to exercise authority to control the movement of vessels in U.S. ports. The law permits the President to declare a national emergency,

...by reason of actual or threatened war, insurrection, or invasion, or disturbance or threatened disturbance of the international relations of the United States, or whenever the Attorney General determines that an actual or anticipated mass migration of aliens en route to, or arriving off the coast of, the United States presents urgent circumstances requiring an immediate Federal response...⁸

The powers triggered by presidential declarations of emergency in peacetime are broad and have slowly received Congressional oversight. In 1976 and 1977, Congress passed the National Emergencies Act and the International Emergency Economic Powers Act, placing limitations on continuous states of emergency declared by the President. These acts required emergencies expire after one year unless specifically renewed and that the declaration be public and published in the Federal Register.⁹ However, Congress failed to establish a standard for a national emergency, leaving the potential for future controversy as to what constitutes a national emergency.¹⁰ Key Presidential Declarations of Emergency and USCG Security Zones played an important role in countering Cuban American flotillas intending to commit unlawful actions. To

understand the flotillas and their goals, it is important to note the complex migration history involving Cuba and the U.S. and how it is an important part of U.S.-Cuba relations.

Overview of the History Cuban Migration to the U.S.

U.S. bilateral relations with Cuba are popularly characterized by Cold War conflicts, but migration is a prominent and enduring issue since Castro came to power. Only 90 miles separate the Florida Keys and Cuba, so travel by private boat is possible and maritime transportation is the primary means of Cubans migrating to the U.S. In 1964, Castro briefly opened the Cuban port of Camarioca and allowed Cubans to depart. A major boatlift took place with private boats from the U.S. traveled south and brought back 2,979 Cubans.¹¹ In 1980, Castro again opened Cuba's borders, allowing boats from Florida to pick up people in the port of Mariel, Cuba. The resulting Mariel Boatlift had over 125,000 Cubans rapidly arrive in the U.S. and concluded with an agreement between Cuba and the U.S. on immigration issues.¹² Throughout Castro's rule, Cubans have attempted to migrate by sea in boats and rafts. Following the Cuban revolution until 1994, any Cuban migrant interdicted at sea was brought into the U.S. Once they arrived, they received special treatment under the Cuban Adjustment Act of 1966 and can become a U.S. Permanent Resident after one year, far faster than any other immigrant group in the U.S.¹³ In 1994, Castro opened his borders and another mass migration from Cuba took place. It was ended following an agreement between the U.S. and Cuba that firmly established legal migration procedures for 20,000 Cubans to legal enter the U.S. each year. In return, the Cuban government agreed to allow Cuban migrants interdicted at sea to be returned to Cuba and their government pledged not to persecute individuals for attempting to leave. The 20,000 Cubans per year limit represents the largest number of individuals from any nation in the world permitted to permanently migrate to the U.S.¹⁴ This arrangement requires close cooperation of both

governments to resolve numerous technical details. Any conflicts in bilateral relations can jeopardize the migration agreements and increase the possibility of a mass migration.

Cuban American Exile Community

The Cuban American exile community is concentrated in South Florida, New York and New Jersey. They are a wealthy group with significant political clout, and elements of the community regularly influence U.S.-Cuba policy.¹⁵ In 2000, they held a \$25,000 a plate fundraiser for the Democratic Party raising millions.¹⁶ In addition to Democratic support, they have provided significant financial support to Republican political candidates to include President Reagan and both Bush presidents.¹⁷ With easy access to private boats, the Cuban American community developed a significant affinity for flotillas. Whether used in bringing migrants to the U.S. in 1964 or 1980 or rescuing those escaping on a raft, flotillas have been the tool used by Cuban Americans throughout the history of post-revolution Cuba. Given the emotional value of flotillas and the potential to provoke the Cuban government, they were to become a serious form of Cuban American protest following the change of Cuban migration policy in 1994.

Cuban American Flotillas Through 1994

Aside from flotillas used during mass migrations, flotillas have been a major form of Cuban American protest. Ramon Donestevez was a major figure in this movement. He made several flotilla trips to Cuba from the 1960's through 1975 to bring humanitarian supplies and bring back dissidents, gaining national attention. As outlined in a memo to President Johnson's national security advisor, Donestevez planned a flotilla to Cuba in 1967 and the Department of Justice issued a restraining order to stop him.¹⁸ This was not an actual restraining order, but likely a letter to the organizer notifying him that his actions could result in prosecution since he

was on parole for a previous criminal violation. Donestevez's actions did not cause direct damage to U.S. Cuban relations because of its already deteriorated state. There were no migration agreements in place and his trips were reminiscent of Cold War insurgency actions. On October 22, 1975, the FBI searched his business and recovered several firearms believing future flotillas were to smuggle arms to Cuba. It turned out he was stockpiling weapons to fight off any USCG law enforcement efforts that might interfere with his trips.¹⁹ His flotilla attempts ended in 1975 and he died in 1976.

Throughout the early 1990's as the fall of the Soviet Union weakened the Cuban government, flotilla protests became more commonplace. In 1990 alone, Cuba claimed 14 separate flotillas had made incursions into Cuban territorial waters.²⁰ Even if this figure is exaggerated, it demonstrates that these incursions were significant and aggravating factor for the Cuban Government. With the loss of Soviet support, Cuba was less secure and felt more susceptible to U.S. military action.²¹

The 1994 migration agreement came about as a desire to prevent another situation like the Mariel Boatlift.²² Talks with the Cuban government and their commitments to the provisions of the agreement showed the situation inside the country improved enough to allow for the return of Cubans interdicted at sea. This was a blow to the Cuban American community's political influence and gave rise to those seeking to bring attention to their cause with extreme measures.²³ The sinking of TREZE DE MARZO became an incident on which to focus future protests. Before the mass migration and subsequent agreement of 1994, Cuban migrants hijacked the Cuban tug TREZE DE MARZO on July 11, 1994 in an attempt to escape to the U.S.. The Cuban Border Guard interdicted the vessel in Cuban waters and attempted to use fire hoses and shouldering the vessel (gently colliding with the vessel) as a non-lethal means of

stopping it.²⁴ The tug capsized and 41 people died. This event has significant meaning to the Cuban American community and was capitalized on in the formation of the Democracy Movement.²⁵

Cuban American Flotillas After 1994

In 1995, Raul Sanchez, a Cuban exile, founded the Democracy Movement. This small Cuban American group set itself apart with the organization of flotilla protests. The goals of these flotillas were to bring attention to Cuban American community causes while taking direct action against the Cuban Government. A Cuban Air Force officer who flew a MiG fighter to Florida proposed the popular idea that flotillas arriving in Cuba and operating off the coast would prompt mass protests there.²⁶ The Democracy Movement's flotillas were generally ad hoc in their membership, but had the permanent association of the pleasure craft DEMOCRACIA, which became the movement's flagship. Three private aircraft also committed their support, forming the Democracy Air Group. The TREZE DE MARZO incident became the reason for the Democracy Movement's first flotilla held on July 13, 1995. The flotilla planned to travel south and lay a wreath at the site of the tug's sinking, which was inside Cuban Territorial waters. The flotilla departed with significant publicity and was made up of nine pleasure craft, including one with a Miami-Dade County government official onboard. DEMOCRACIA entered Cuban waters and was shouldered by a Cuban patrol boat. The Cuban Government²⁷ protested the action significantly in the press.

Sanchez and the Democracy Movement received significant positive media coverage in Miami and were emboldened to continue the flotillas. He conducted two protest flotillas in September and October 1995. Specific facts surrounding any territorial sea violations are unknown, but the Cuban Government protested the acts.²⁸ These flotillas gave Castro's

government a specific threat to focus on, particularly with a deteriorating economic situation in the mid-1990's and Castro increased active patrols by military aircraft and vessels. Given the heavier seas in the winter months in the Florida Straits and the main flotilla event occurring in July, Cuban American aircraft presented the Cuban Government with an opportunity to strike.

The Brothers to the Rescue Shoot Down and Flotilla Response

Brothers to the Rescue (BTTR) is a Cuban American group based out of Miami. It is made up of private aircraft and volunteer pilots who search the waters of the Florida Straits for Cuban migrants and call for their rescue. They also conduct overflights of deserted Bahamian cays between Cuba and Florida to search for migrants. On February 26, 1996, a Cuban MiG-29 fighter and a MiG-23 fighter shot down two BTTR Cessna aircraft. Although Cuba claimed that the aircraft were violating Cuban airspace when they were shot down, the U.S. had evidence the BTTR aircraft were actually in international airspace, never violated Cuban airspace and that the pilots of the MiGs had sufficient time to identify and warn them.²⁹ The shoot down led to strong condemnation by the U.S. government, but was also a sign that the U.S. was losing control over U.S.-Cuba relations and was following the lead of the Cuban American community in responding to their incidents.

The U.S. Government and President Clinton faced short and long term problems in the wake of the shoot down. In the short term, the U.S. had to condemn Cuba's actions and contend with a memorial flotilla planned by the Cuban American community. It was a predicament of condemning the act of the shoot down, supporting free speech in the form of organized protest and memorial, and promoting freedom on the high seas all while preventing further activities that could provoke the Cuban government. Reacting quickly, the U.S. Government coordinated an operation to escort the flotilla, which involved the use of several USCG cutters, USCG aircraft,

U.S. Navy ships and U.S. Air Force fighters and support aircraft. Firm warnings were given to the flotilla organizers that their vessels would be seized if they entered Cuban territorial waters. The USCG marked the shoot down location and would be present to conduct immediate law enforcement, although an unlawful act was less likely since the shoot down location was in international waters. However, the escort solution was undesirable for the U.S. government because the protection and escort of the flotilla implied approval for the goals of the flotilla and its organizers. The actual flotilla itself had significant participation and did not result in an international incident.

Furthermore, 1996 was a presidential election year and President Clinton did not want to lose support of the Cuban American community. They were strong political backers in 1992 during his first election, raising over \$1 million for his campaign and did not show any support at the time for the Republican candidate Bob Dole.³⁰ To appease the Cuban American community, Clinton signed into law the Helms-Burton Act, which imposed significant financial penalties on Cuba and carried provisions to allow Cubans who fled the country to be compensated for their loss of Cuban assets.³¹ The shoot down, while tragic, was a major victory in furthering the Cuban American political agenda. In addition to maintaining political support that already was weakened by the change of migration policy in 1994, Clinton had to find a way to curb unlawful actions by flotillas.

The shoot down, the TREZE DE MARZO incident and the flotilla events of 1995, along with the popularity of direct action against Cuba demonstrated the potential for significant escalation on the part of the Cuban-American flotillas and the Cuban government. The U.S. government needed to take substantial action other than escorting flotillas to prevent problems in

the future. The sensitive political nature of U.S.-Cuba relations and the complexities of the flotilla events required close interagency cooperation.

Interagency Response

The U.S. response to the flotillas between 1995 and 2004 included a diverse group of agencies. The Office of Cuban Affairs at the State Department was frequently the lead agency. They had direct dealings with the Cuban government through the U.S. Interest Section in Havana and the Cuban Interests Section in Washington, D.C. (two entities created to handle technical details of migration agreements). As the lead agency for foreign affairs, they had a clear vision on executing foreign policy with regards to Cuba, but were hampered by the impacts of earlier flotillas. The Department of Justice served as a liaison to the U.S. Attorney in Miami for prosecution issues and the Attorney General was the legal advisor to the President and interagency. The USCG was an agency on the front lines. As both an Armed Service and a law enforcement agency, the USCG had a long history operating in the Straits of Florida, dealing with Cuban migrant interdiction as well as mass migration emergencies from Cuba. The USCG also had a professional relationship with the Cuban Border Guard. Both used established telex communication between the Command Centers in Miami and Havana for migration and search and rescue matters. The USCG also had a deescalating effect when operating near Cuban waters compared to the U.S. Navy, given years of cooperation with Cuban forces.³² The Department of the Treasury enforced the embargo and regulations regarding the movement of goods and money between the U.S. and Cuba. The Department of Defense maintained its role in national defense made more prominent with the shoot down. The Federal Aviation Administration conducted enforcement and investigations of aviation violations. Ultimately coordinating efforts was the

National Security Council (NSC). Acting on behalf of the President, the NSC coordinated plans to develop an enforcement effort and balanced political objectives with a practical end state.

Presidential Proclamation and the South Florida Security Zone

In 1996, a USCG Security Zone was seen as the best means of countering future unlawful flotillas. The first step in this process was a declaration of emergency by the President. On March 1, 1996, President Clinton signed *Presidential Proclamation 6867*, which declared that a state of emergency existed as a result of the shoot down and there existed a danger to aircraft and vessels operating in international waters surrounding Cuba. This declaration triggered USCG authority to control the movement of vessels in U.S. ports, and the USCG created the *South Florida Security Zone*. It was a Security Zone in U.S. territorial seas from Boca Roton on the East coast of Florida around to Naples, on the West coast of Florida. Any nongovernmental vessels, 50 meters in length or less, would not be permitted to get underway or depart the Security Zone if they intended to enter Cuban Territorial waters. Violating this Security Zone could lead to the seizure of the vessel involved, arrest, a possible prison sentence of up to 10 years and a \$250,000 fine. Most importantly, the *South Florida Security Zone* met the goal of being able to take law enforcement action against individuals that intended to act in manner that would harm international relations with Cuba, rather than reacting after the fact.³³ It did not apply to aircraft as there were numerous enforcement measures available against aircraft, such as inspecting aircraft before departure (where it would be obvious to spot items like leaflets), not clearing its departure and the ease of constantly monitoring aircraft to present evidence to revoke a pilot's license.

The South Florida Security Zone in Action

The remainder of 1996 through May 1997 provided opportunity to test the *South Florida Security Zone*. While there were no violations of Cuban Territorial Seas, it was often difficult to determine the exact intent of the flotilla organizers and participants. The Democracy Movement was the sole entity in the Cuban American community publicly leading and organizing flotillas, and had a history of entering Cuban territorial seas, but also of conducting lawful protests in international waters. This made it difficult to use the participation of a particular individual or vessel as an indicator of unlawful intent and as the main grounds to take action. Given the popularity his confrontation with the Cubans generated in 1995, Sanchez would not explicitly state his exact intentions, remaining unclear as to intending to comply or violate the *South Florida Security Zone*. In May 1997, the *South Florida Security Zone* was revised to allow for the arrest or seizure of an individual if there was an articulable suspicion they intended to enter Cuban territorial seas. It also gave the USCG the option to seek verbal assurances from participants and organizers that they would not enter Cuban territorial seas.³⁴ The USCG also met with Cuban Border Guard officials to discuss responses to incidents during future flotillas.³⁵

The *South Florida Security Zone* was tested on July 13, 1997. During a flotilla organized to commemorate the sinking of the TREZE DE MARZO, USCG officials in Key West approached Sanchez as the flotilla was readying for departure and asked for assurances that he and his flotilla would not enter Cuban territorial seas. He refused to give specific assurances, so the USCG seized DEMOCRACIA as it departed the harbor. Sanchez was not arrested, but was taken ashore and immediately released. Often it is difficult to determine the deterrent effect of an enforcement action as to whether it is highly effective or merely sufficient,³⁶ but in this case its deterrent value was clear. Other flotilla vessels would not allow Sanchez to board, gave

assurances they would remain in international waters, and conducted the flotilla without him fearing their vessels would also be seized. The flotilla remained in international waters. In December 1998, the pleasure craft HUMAN RIGHTS was seized during a flotilla when its master failed to give assurances it would not enter Cuban waters. However, HUMAN RIGHTS was a vessel was in poor condition with a history of mechanical problems on previous flotillas, so its seizure was of little consequence to the group or future flotillas.

The Florida Security Zone

The *South Florida Security Zone* was amended again in 1998 and published as the *Florida Security Zone*. It covered the state of Florida and associated territorial seas excluding the panhandle. The amendment was necessary because individuals claimed to have sailed from Palm Beach, Florida (outside the previous zone boundaries) to travel to Cuba on pleasure craft during the Catholic Pope's visit to Cuba in 1998. Sanchez never formally organized a flotilla for that purpose, but he did make statements before the Papal visit that he had a right to travel to his homeland to see the Pope.³⁷ Flotillas continued through 2001 and were all peaceful events, remaining lawful and in international waters and generating little attention, with the *Florida Security Zone* serving its purpose. Instead of violating Cuban territorial seas, the organizers attempted new tactics like firing fireworks or using mirrors to get attention from people in Cuba.

A Challenge to the Florida Security Zone

Several events degraded the influence of the Cuban-American community's political clout. The Elian Gonzalez case in 2000 was a public affairs problem for the community and a situation that ultimately favored Cuba.³⁸ Additionally, President Bush in 2002 continued to renew *Presidential Proclamation 6867*, originally enacted for the 1996 shoot-down, drawing criticism for no longer being a true emergency.³⁹ The continued weakening of the Cuban

economy reduced Cuba's ability to conduct naval and air force patrols on a routine basis, although the capability still existed. These factors provided further motivation for Cuban Americans to exploit weaknesses in the *Florida Security Zone*.

A key aspect of the *Florida Security Zone* regulations through 2004 was that it was unlawful to depart the zone with the intent to enter Cuban Territorial Seas. However, there is no violation if the individual develops the intent *outside* the Security Zone. This development of intent can manifest itself at sea, in a part of the U.S. that is not covered by the zone, or in a nearby foreign country. In 2001, during a Democracy Movement flotilla, the flotilla vessels arrived at the regular point in international waters where they had conducted ceremonies in the past to commemorate the TREZE DE MARZO sinking. A regular practice of the USCG was to keep a Cutter near the flotilla ceremony site to observe the activity, for safety of life at sea concerns as well as enforcement. Past flotillas had several circumstances involving broken down vessels and medical situations unrelated to contact with the Cubans that required a response. In this instance, Sanchez decided to go to the exact spot of the sinking inside Cuban territorial seas.⁴⁰ The USCG observed his vessel entering Cuban waters where it remained for 60 minutes then returned to Key West. The Cubans did not respond with military force. The USCG arrested the crew of the vessel and Sanchez. In 2003, the charges were dropped. It would have been difficult to successfully prosecute the case, because of the need to prove that the intent to enter Cuban Territorial Seas was in fact present while Sanchez was inside the *Florida Security Zone*.

A New Presidential Proclamation

This incident and the inability to prosecute led to a significant modification of the *Florida Security Zone*. On February 26, 2004, President Bush signed *Presidential Proclamation 7757* affirming the state of emergency with Cuba and increased the scope of USCG authority with

regards to vessels traveling to Cuba. The new regulations required U.S. flagged vessels 100 meters or less to obtain a permit before traveling to Cuba. It no longer had a territorial provision of the State of Florida. It also expanded the size of the vessels to include other large craft that could possibly travel to Cuba. Among the many plans created by Raul Sanchez to target Cuba, he openly discussed obtaining a small merchant ship, stocking it with medical supplies and sailing around Cuba taking items into Cuba at various points.⁴¹ A further benefit to the expanded regulations was the ability to better enforce economic and financial prohibitions in dealing with Cuba. Unless licensed by the U.S. Treasury Department, people are not permitted to spend any money in Cuba. If they travel there without a license, they must be fully hosted, so applying for either permit would allow Treasury and the USCG to gain visibility on future events. Another motivator in the signing of the new proclamation was to have a tool for dealing with a future mass migration from Cuba. A radical change in Cuba's government or their policies could result in a mass migration and as in the Mariel Boatlift of 1980, hundreds of private craft could travel south to pick up migrants.

Since his arrest and dropped charges, Sanchez continued to gain attention for his group and cause. In a 2004 interview, he pledged that he would comply with revised enforcement efforts and obtain any permits required before going to Cuba and would stay in international waters during future flotillas.⁴² In 2006, with Fidel Castro seceding power to his brother, Sanchez among others saw this moment as a chance to bring about further change. He openly advocated traveling to Cuba in flotillas to pick up exiles and deliver humanitarian aid to the Cuban people. He threatened civil disobedience tactics within the U.S. if prevented to travel to Cuba, but he has not carried out these threats.⁴³ Flotillas remain a viable tool for the Cuban American community and can still influence U.S.-Cuba relations.

Conclusion and Future Application

Protest flotillas increased in popularity in the mid-1990s and drove the course of events that strained international relations with Cuba and led to a loss of life, but furthered Cuban American interests with exposure to their cause and the passage of tough financial restrictions against Cuba. Also endangered were the migrant agreements between the U.S. and Cuba. USCG Security Zones played a significant role in preventing future loss of life and escalating tensions with Cuba. The use of USCG Security Zones in handling the Cuban American flotillas has practical application in handling future flotilla protests. The use of flotillas to conduct protests will be a popular tool for supporters of environmental causes in the future. USCG Security Zones can keep the protestors' actions safe and prevent unlawful acts. This law enforcement framework can serve as an example to other nations as well. Two recent examples involving other countries can serve as examples of scenarios the U.S. government may face. The first being flotilla protestors from Australia using Netherlands and Australian flagged vessels to attack Japanese whaling ships in 2008. Japan blamed both nations for failing to stop protestors.⁴⁴ In Gaza in 2008, flotilla vessels ran an Israeli blockade as a form of protests to deliver humanitarian aid. In a later action, Israeli vessels rammed and significantly damaged a private vessel attempting to run the blockade.⁴⁵ Similar scenarios could emerge where boaters operating from U.S. ports conduct similar actions in nearby neighboring countries.

While not without the potential for controversy, USCG Security Zones provide an effective means to take law enforcement action against flotilla protestors intending to commit unlawful acts. They reduced and nearly eliminated unlawful flotilla actions, as demonstrated through the many years of lawful flotilla protests that have occurred without international incident with Cuba. They proved an effective deterrent not only for the majority of protestors,

but also for the Cuban Government reacting to future protests. The ultimate implication of failing to prevent these situations is the loss of life and the inability to use a measured, progressive continuum in bilateral relations with the target nation.

¹ Jessica Matthews, "Power Shift," *Foreign Affairs* 76, no. 1 (January/February 1997), 53.

² Rex Weyler, *Greenpeace* (Vancouver, British Columbia: Raincoast Books, 2004), 111.

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⁴ "Anti-Whaling Activists Clash with Indians," *CNN.com*, November 2, 1998, <http://www.cnn.com/TECH/science/9811/02/makah.whaling/index.html> (accessed November 17, 2008).

⁵ United States Code of Federal Regulations, Title 33, Section 165.30.

⁶ Rex Weyler, *Greenpeace* (Vancouver, British Columbia: Raincoast Books, 2004), 84.

⁷ Mark Murakami, "Securing the Superferry - Security Zone Upheld," *HawaiiOceanlaw.com*, October 15, 2007, <http://www.hawaiiOceanlaw.com/hawaiiOceanlaw/2007/10/securing-the-su.html> (accessed November 17, 2008).

⁸ United States Code, Chapter 50, Section 191.

⁹ Don Bacon, "It's Not Exactly a National Emergency," *LewRockwell.com*, June 5, 2008, <http://www.lewrockwell.com/orig9/bacon3.html> (accessed August 10, 2008).

¹⁰ Paul Stevens, *U.S. Armed Forces and Homeland Defense* (Washington D.C.: CSIS Press, 2001), 19.

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¹⁷ Max Castro, "Grumpy Old Men," *Salon.com*, April 6, 2000, <http://www.salon.com/news/feature/2000/04/06/cubans> (accessed December 28, 2008).

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¹⁹ Federal Bureau of Investigation, *Ramon Donestevez Dominguez Internal Security - Cuba, 105-10741*, Miami FL: Federal Bureau of Investigation, January 9, 1976.

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